

# **EXHIBIT E - PART 2**

- Donald Smith -

31

1  
2 over I'm going to go back and review anything  
3 identified in these depositions. As part of our  
4 mission statement we are a learning organization  
5 and as such, we are going to go back and review  
6 any issues that were identified during these  
7 depositions.

8 Q. In terms of the information about  
9 individuals on the correction side, not medical,  
10 but the correction staff not implementing  
11 constant watch if an inmate scored eight or  
12 higher, did you ever inquire of Captain LeFever  
13 about whether or not in his view, day-to-day  
14 operations of the jail, that was in fact true?

15 A. I was under the impression that we  
16 were in full compliance.

17 Q. Impression aside, did you ever ask  
18 Captain LeFever about that?

19 A. We had many discussions on all  
20 aspects of the operations of the jail to include  
21 the suicide screening, training, medical  
22 support. And certainly the day of Spencer's  
23 suicide one of the first people I saw after  
24 coming out of the cell was Captain LeFever, and  
25 I had one question for him. And the question

- Donald Smith -

32

1 was, "Bob, what was the suicide screening?"  
2  
3 And his head dropped down -- I mean, there are  
4 some events you can remember in life, they are  
5 defining moments. His head dropped down, he  
6 said, "Boss, you are not going to believe this.  
7 He should have been on a constant watch." And  
8 that said it all.

9 And since -- since that time we  
10 have had many conversations on suicide  
11 screening. We have studied it -- I'm talking  
12 about total suicide prevention. We have studied  
13 it, and we are continuing to work on developing  
14 a model of excellence.

15 Q. Did you have any discussions with  
16 LeFever, though, at any point in time about  
17 specifically what you heard in this case, which  
18 is that constant watch was not always  
19 implemented prior to May of '06 when an inmate  
20 scored eight or higher on the suicide screening  
21 form?

22 A. I don't recall a specific  
23 conversation. But as I said, I had those  
24 conversations with three individuals - Captain  
25 Butler, Lieutenant LeFever/Captain LeFever,

- Donald Smith -

33

1  
2 Sergeant O'Mally/Lieutenant O'Malley, as they  
3 were promoted. I can't specifically remember,  
4 you know, when those conversations took place.  
5 But we absolutely had conversations about  
6 suicide screening.

7 Q. Who in the County of Putnam has the  
8 authority to prefer disciplinary charges against  
9 correction staff?

10 A. I'm the Sheriff of the county and I  
11 have the ultimate authority.

12 Q. Does anybody else have any role in  
13 that decision-making process?

14 A. Any member of the chain of command  
15 can play a role.

16 Q. Does Captain LeFever have a role?

17 A. Captain LeFever can use counseling.  
18 Captain LeFever can -- he can recommend charges.  
19 He can recommend it verbally, he can recommend  
20 it in writing. He plays a major role, but when  
21 it comes to, you know, actual -- he can conduct  
22 additional training. When it comes to actual  
23 charges, he would do it through the chain of  
24 command through the undersheriff and myself.  
25 The undersheriff, of course, plays a role in it.

- Donald Smith -

34

Captain McNamara, Bill -- Confidential Advisor  
Bill Spain would play a role in it as well.

Q. In terms of discipline of  
correction staff, is it your testimony that  
LeFever has the authority to implement verbal or  
written counseling without going through you?

A. Yes. Counseling -- counseling --  
counseling can be done by any member, any  
supervisor in the chain of command. But  
counseling cannot be disguised as discipline.  
In other words, if it is a reprimand. In other  
words, they can counsel, they can provide  
additional training. But if it crosses the line  
of being a reprimand, I believe under New York  
state applicable laws it would have to, you  
know, be in the purview of the sheriff.

Q. In terms of the employees who work  
in the jail, are they considered to be employees  
of the county, of the sheriff, of both?

A. They are employees -- they are  
employees of the county. They are county  
employees. The only -- the only issue with and  
I think what you are -- maybe I -- the only -- I  
think you are referring to the joint employer

- Donald Smith -

35

status, and that is under the Taylor Law. That is not under their status as a county employee.

*(Recess held, after which the answer was repeated.)*

Q. You had started saying something about civil service. Did you want to add to your prior answer?

A. I'm not sure that -- you know, they are county employees, they are county employees with civil service status. In other words, they take a civil service test and they are selected off of a list. The only issue pertaining to the joint or dual employer status is the fact that the sheriff under the Taylor Law has a right now to sit at the table when they bargain for their contract. The sheriff can sit at the table with the county executive during negotiations. That's really the only issue, but they are county employees.

Q. With respect to them being county employees, it's you the sheriff who has the authority to do the discipline when it reaches the level of reprimand, either a reprimand or formal charges?

- Donald Smith -

36

1  
2 A. My understanding is if it goes to  
3 formal charges where a reprimand would come into  
4 play, that it would come under the jurisdiction  
5 of the sheriff.

6 Q. Who is responsible in the county  
7 for training the correction staff?

8 A. The training of the correction  
9 staff is conducted by the jail administrator and  
10 his staff. Now that's the ongoing training that  
11 is conducted, you know, within the department.

12 There's also institutional training  
13 which is conducted at an academy and, you know,  
14 those courses are -- you know, normally counties  
15 get together and conduct that training together.  
16 Most often that training is conducted in either  
17 Dutchess County or Orange County.

18 Q. The academy training is given at  
19 the point of hire?

20 A. The academy training is given after  
21 they are hired.

22 Q. And then the ongoing training once  
23 they are an employee of the county is provided  
24 through the jail administrator, at this time  
25 Captain LeFever?

- Donald Smith -

37

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2           A.     That is correct. And he has a  
3     training officer and a training staff. And that  
4     was one of the issues that concerned me when I  
5     first became the sheriff.

6           Q.     Does the jail administrator have  
7     the authority then to set any types of policies  
8     or procedures within the facility?

9           A.     The jail administrator certainly  
10    sets many of the procedures that occur on the  
11    day-to-day operations of the jail. You know, he  
12    can implement new guidance that comes down. If  
13    you look at the -- if you look at the standards  
14    from the Commission of Correction, there's --  
15    you know, there's a lot of issues that are  
16    directly -- responsibilities are given to the  
17    jail administrator.

18          Q.     In terms of the jail administrator  
19    setting forth procedures, these procedures are  
20    what the staff follows in the goal of carrying  
21    out the broader policies that you set; is that  
22    fair to say?

23          A.     That is correct. And I would say  
24    that if the -- you know, the jail administrator  
25    is always working to make things more specific



- Donald Smith -

38

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2 or to -- he goes to conferences in his own  
3 right, he meets with jail administrators around  
4 the state. The Commission meets from time to  
5 time. So he certainly can take issues and  
6 implement procedures. Obviously, if there  
7 was -- if there was a procedure that was going  
8 to be in violation of a broader policy, I would  
9 expect he would talk to me about that.

10 Q. Take a look, if you would, at  
11 Exhibit 3, the form itself. Do you recognize  
12 that as the form that Putnam County used up  
13 until some point earlier this year when it was  
14 changed to the state form?

15 A. Yes, I recognize the form.

16 Q. Do you recall when you first saw  
17 this form?

18 A. I don't recall exactly when I first  
19 saw the form.

20 Q. Would it have been sometime in  
21 2002?

22 A. I believe it would have been in  
23 2002. Because, again, I was going around asking  
24 questions, receiving briefings. You know, it  
25 was like drinking from a fire hose, but I saw

- Donald Smith -

39

1  
2 many many forms. And again, my responsibilities  
3 go beyond just the jail. It was a whole litany  
4 of law enforcement responsibilities I have as  
5 well and I was reviewing those as well.

6 Q. You indicated earlier that you were  
7 told that this form basically was the form that  
8 the Commission used, correct?

9 A. That is correct. That is my  
10 memory.

11 Q. You then at some point in time saw  
12 Exhibit 1, the Commission's form, correct?

13 A. Yes.

14 Q. At the time that you were told that  
15 Exhibit 3, the county form, was basically the  
16 form that the state used did you ask what the  
17 differences were?

18 A. No, because -- are you talking  
19 about when I first saw the form?

20 Q. In other words, you testified  
21 earlier today that you were specifically told  
22 that the form was basically the same.

23 A. Yes.

24 Q. You don't recall who told you that?

25 A. I don't.

- Donald Smith -

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1  
2 Q. Do you recall if you asked at that  
3 point in time whether there were any  
4 differences?

5 A. I don't recall, because again the  
6 form was purported to me to be the form. In  
7 other words, it was -- the only reason it was in  
8 this format, I was told it was in a packet of  
9 the total intake process and that's why it was  
10 that way.

11 Q. In terms of the form itself, when  
12 you compare it to Exhibit 1, there are  
13 differences between the state form and the form  
14 the county used?

15 A. Yes.

16 Q. The differences specifically are  
17 under the section for the action that's supposed  
18 to be taken by a corrections intake officer and  
19 the sergeant when a score is eight or higher,  
20 correct?

21 A. Yes.

22 Q. The other difference is the actions  
23 to be taken by the intake officer and the  
24 sergeant when one or more shaded boxes are  
25 checked, correct?

- Donald Smith -

41

MR. KLEINBERG: Objection.

A. Yes.

Q. The county form under those two circumstances does not say to the staff that they must institute constant watch, correct?

A. The county form states that you are to notify -- I'm sorry. It says here, "notify the shift supervisor." And if you go into our policies and procedures, that's where it would indicate to the shift supervisor to initiate a constant watch.

Q. Do you know what policy and procedure that is?

A. It's in the Red Book. I believe it's in -- I believe it's Article 3, but I'm not absolutely positive. There's something else on the form that's different here, too. And that is on the county form there's an inmate signature and on the state form there's no inmate signature.

Q. With respect, though, to the state form, that specifically says that if an inmate scores eight or higher not only is notification required but instituting constant watch is

- Donald Smith -

42

required?

A. It is very specific on the state form. It says it on the state form.

Q. And it also says on the state form the same thing, notify a supervisor and institute constant watch if one or more shaded box is checked, correct?

A. Yes.

Q. In terms of the county form, it only says that if the score is eight or higher or a shaded box is checked, the intake officer has to notify the shift supervisor.

MR. KLEINBERG: Objection.

Q. Is that fair to say?

A. Yes, that's my understanding.

Q. There's nothing on the form itself which says constant watch should be implemented under these circumstances?

A. That is correct. But I still believe without a doubt that that is the action that's supposed to be taken.

Q. In terms of the basis for your belief, you referred to it being in a county policy in a Red Book, correct?

- Donald Smith -

43

1  
2 A. Yes, ma'am.

3 Q. And the Red Book, is that the  
4 document or the compilation of policies that  
5 officers are given when they are hired?

6 A. Yes.

7 Q. In terms of the Red Book, do you  
8 know if Exhibit 2, which is Article 15, is the  
9 policy that you referred to being in that Red  
10 Book which dictates what a tour supervisor is  
11 supposed to do when an inmate has a score of  
12 eight or higher or a shaded box is checked?

13 A. I believe this is the -- this is a  
14 copy of what is in the Red Book.

15 Q. In terms of Exhibit 2, though, is  
16 this the policy that you referred to just  
17 moments ago in your testimony which you believe  
18 sets forth what the shift supervisor is supposed  
19 to do once notified by reason of the form, the  
20 suicide screening form, what they're required to  
21 do?

22 A. I believe that and I also believe  
23 the training that they receive, both the  
24 training at -- the basic training they receive,  
25 plus the additional training would make that

- Donald Smith -

44

true.

Q. Have you ever attended any training which in any way dealt with suicide prevention?

A. I have walked into a number of training classes, but I don't have a specific memory of attending specific suicide training in the Putnam County Correction Facility. I do remember attending some training in Longmont, Colorado on suicide prevention, but that training was not New York State specific.

Q. And the correction staff in the Putnam County facility wouldn't go to that Longmont training, correct?

A. No, that training was for sheriffs.

Q. But in terms of the training that the correction staff actually receives, are you personally aware of what they are told during that training about suicide prevention?

A. Well, I have seen, obviously, the manuals that -- where the training is conducted. You know, the basis of the training is the manuals from the Commission of Correction and the New York State Office of Mental Health. You know, there's the basic training, there's the

- Donald Smith -

45

1  
2 continuous training that's conducted in the  
3 facility and then there's -- an officer's  
4 handbook that's provided.

5 Q. When did you first see the training  
6 manuals?

7 A. I don't recall, and I don't  
8 specifically recall if I saw them in 2002 or  
9 not.

10 Q. Do you recall when you first saw  
11 the officer's handbook?

12 A. I don't.

13 Q. Did you ever speak with anybody  
14 about whether during the training that's given  
15 to staff anything is specifically referenced  
16 about constant supervision being required if an  
17 inmate scores eight or higher on the form?

18 A. I believe that's specifically in  
19 the lesson plan.

20 Q. But did you ever talk to anybody  
21 about whether that was actually instructed  
22 during these training sessions?

23 A. I don't -- I don't have a specific  
24 memory of a conversation. I could have, but I  
25 don't have a specific memory of that



- Donald Smith -

46

1 conversation.

2  
3 Q. Did you ever speak with anybody  
4 about whether staff in the facility are given  
5 training, again, specifically on what -- on  
6 implementing constant watch if a shaded box is  
7 checked?

8 A. I don't have a specific memo on  
9 that topic either. But something very relevant  
10 to this is that when I became the sheriff one of  
11 the -- one of the many concerns I had was when I  
12 found out that the training -- a number of  
13 training sessions were not being conducted. And  
14 I specific -- in talking with the captain and I  
15 believe the lieutenant, I also believe the  
16 sergeant at the time, the issue was funding  
17 because most training is done on overtime. So I  
18 procured \$150,000 from the legislature to  
19 implement the training. And I believe at the  
20 time the training issues were suicide prevention  
21 screening, firearms training, blood borne  
22 pathogens. There were a number of issues, and  
23 that discussion took place. But specifically  
24 did we talk about the two questions you asked  
25 me, I don't recall.

- Donald Smith -

47

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2 Q. In terms of the Putnam County  
3 Correctional Facility policy that's before you  
4 as Exhibit 2, has that been modified at all  
5 since you became sheriff?

6 A. I do not believe it's been  
7 modified.

8 Q. In terms of the first page,  
9 "booking officer will," under the admissions  
10 screening section, you see that?

11 A. Yes.

12 Q. It then describes on the next page  
13 the responsibilities of the intake officer or  
14 the booking officer, correct?

15 A. Correct.

16 Q. One of the things small letter (b)  
17 under that section says, administration of  
18 suicide prevention screening guidelines form 330  
19 ADM, do you see that?

20 A. That is correct.

21 Q. Number 3 says, "The booking officer  
22 is required to immediately notify the tour  
23 supervisor whenever a prisoner scores in the  
24 high risk score of eight in column a or  
25 immediate referral categories on the suicide

- Donald Smith -

48

1  
2 prevention screening form." Do you see that?

3 A. Yes, I do.

4 Q. And do you know what the immediate  
5 referral categories are that are referred to  
6 there?

7 A. The immediate referral categories  
8 are the shaded boxes.

9 Q. And the booking officer, according  
10 to this policy, is supposed to notify the  
11 supervisor whenever a prisoner under number 3,  
12 letter (e), appears to be significantly under  
13 the influence of alcohol or drugs. Do you see  
14 that?

15 A. Yes.

16 Q. Do you know in terms of the  
17 practices in the jail during the time that you  
18 were sheriff whether or not the booking officer  
19 followed this policy by immediately notifying  
20 the tour supervisor whenever a prisoner scored  
21 an eight or higher on the suicide screening  
22 form?

23 A. I believe that was done. And in  
24 fact, there were a number of cases where people  
25 were put on a constant watch. It would be brief

- Donald Smith -

49

1  
2 that a person would be put on a constant watch  
3 with a score of a two simply because of  
4 something that bothered the booking officer or  
5 bothered the sergeant. They had the authority  
6 to even exceed the standard.

7 Q. Do you know if in practice the  
8 booking officer always notified the supervisor  
9 when the referral categories, the shaded boxes,  
10 were checked on the suicide screening forms?

11 A. I sat in the depositions and I  
12 obviously know that -- I know it was --  
13 particularly in the case of Spencer Sinkov,  
14 notification wasn't made.

15 Q. In terms of in the case of Spencer  
16 Sinkov notification wasn't made under  
17 circumstances where not only was one or more  
18 shaded box checked, but he also had a score  
19 higher than eight?

20 A. Yes, he had a score of ten and the  
21 referral was not made.

22 Q. In terms of the practices in the  
23 jail, you know, in terms of the day-to-day way  
24 that this policy is carried out, do you know if  
25 the staff notified the supervisor, the tour

- Donald Smith -

50

supervisor in writing or verbally?

A. I believe they notify them both verbally and in writing. In other words, the first thing they would do is call on the radio and tell them -- tell the supervisor. And then the supervisor would come review the form. So it would be both, it would be both verbal most likely via radio and second in writing.

Q. What do you base your belief on?

A. That it was the policy and, you know, again I believe we run a good jail overall.

Q. In terms of your belief, what do you base that on? In other words, did somebody tell you that that's the way it was done, did you personally see it, something else?

A. I have a lot of people that help me perform my duties. The sheriff has a broad array of duties. And I had great confidence in, you know, my undersheriff, in Captain LeFever, in Lieutenant O'Malley and in the sergeants. And, you know, just based on feedback I would get on constant watches, the number we would be putting into place, I had a strong belief

- Donald Smith -

51

1  
2 that -- and the feedback from the Commission of  
3 Correction who inspected us.

4 Q. Did any of the feedback you  
5 received, in other words -- let me withdraw the  
6 question.

7 Do you specifically have personal  
8 knowledge as to how in practice the policy  
9 that's before you as Exhibit 2 was carried out?

10 A. Personal knowledge, obviously I  
11 have personal knowledge of the form you just  
12 presented me. But on a day-to-day basis, I  
13 didn't have personal knowledge.

14 Q. In terms of the duties of the tour  
15 supervisor that you referenced earlier, when,  
16 you know, scores of eight or higher and/or a  
17 shaded box is checked notification has to be  
18 made to the tour supervisor, you then indicated  
19 that the tour supervisor's duties are set forth  
20 in this policy, correct?

21 A. Yes.

22 Q. Starting, if you would, the page at  
23 the bottom handwritten 77.

24 A. Yes.

25 Q. Under the section, Procedural

- Donald Smith -

52

Guidelines, "Tour supervisor will," you see that?

A. Yes.

Q. Then it follows through the next page detailing what the tour supervisor's responsibilities are according to this policy, correct?

A. Yes.

Q. In terms of the tour supervisor's responsibilities on the page that's marked 77 letter D, "Ensure that appropriate supervision is given to any prisoner who is determined to be a threat to himself or herself," correct?

A. That is correct.

Q. The next page under the Procedural Guidelines refers to the captain or the staff sergeant. You see that?

A. Yes.

Q. Do you have any understanding as to in practice what happens when the captain and the staff sergeant are both on shift, who makes or who has the responsibilities for the things detailed under that section?

A. I see this as -- I don't see this,

- Donald Smith -

53

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2 Miss Berg, as specifically addressing the  
3 moment-to-moment operation. I see this as a  
4 procedural guideline, and that's what it's  
5 entitled, where the captain or the sergeant  
6 ensure that policies or I should say procedures  
7 are in place whereby this is accomplished.  
8 Because in effect, in effect it's going to be  
9 the tour supervisor, a sergeant, who is  
10 specifically on duty who is entrusted with  
11 reviewing the screening conducted by the booking  
12 officer.

13 Q. In terms of these procedural  
14 guidelines, is it your understanding then that  
15 the procedures that are kept in the facility  
16 would detail how this general policy is to be  
17 implemented?

18 A. Well, I believe -- I believe that  
19 there are many things in this policy and  
20 procedure that are -- that are pretty specific  
21 and very detailed. However, the captain, the  
22 captain certainly can implement procedures  
23 specifically to address issues based on his own  
24 observations or feedback. I mean he is in the  
25 jail every day, he's the jail administrator. So



- Donald Smith -

54

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2 as much as I think this procedure contains a lot  
3 of specificity, certainly it's within the  
4 purview of the captain to identify issues and  
5 give more specific procedures if he deems it  
6 appropriate.

7 Q. Have you ever seen in writing any  
8 more specific procedures which in substance  
9 relate to the requirements set forth in this  
10 policy that's before you as Exhibit 2?

11 A. I believe there was one procedure  
12 that the captain put out that was at issue  
13 pertaining to some of this. I don't know if it  
14 pertained to all of this.

15 Q. When you did you first find out  
16 about that procedure that Captain LeFever put  
17 out?

18 A. I found out about that procedure  
19 when I received a copy of an anonymous letter  
20 that was sent to the Commission of Correction.

21 Q. Do you recall when that was?

22 A. I believe it was in November -- it  
23 was in November/December time frame of 2006.

24 Q. Did the anonymous letter refer to a  
25 specific procedure?

- Donald Smith -

55

A. I believe it did.

Q. What do you recall about that?

A. I believe it referred to -- again, I don't know who -- to this day I don't know who wrote the document. But I believe it referred to a procedure put out by Captain LeFever in the -- again, it was -- I don't have a specific memory of everything in the anonymous letter, but it said something about that the captain put out a procedure shortly before the Commission of Correction came to the facility.

Q. Other than what you learned of in that anonymous letter, did you have communications with anybody verbally or in writing about whether that was accurate?

A. I had a number of conversations.

Q. Who did you speak with?

A. I spoke to Captain McNamara about it.

Q. Anyone else?

A. You know, obviously an anonymous letter is just that, it's an anonymous letter. But it's something, you know, that -- I take any type of feedback I can get to evaluate, make

- Donald Smith -

56

decisions and follow up.

Q. So who did you speak with other than Captain McNamara?

A. I visited the Commission of Correction and I spoke to -- I spoke to two people. I may have spoken to three, but I know I spoke to two. I spoke to a gentleman named Chris Ost, who is on the medical review team, and I spoke to Keith Zobel, who does the cycle reviews at the jail.

And, you know, I had just one, one concern and that was, was something provided, was something provided to the Commission of Correction in their evaluation after the fact. And Chris Ost told me that he would -- he would review every document and provide -- provide -- provide me every document that the Commission -- the Commission had.

And he -- he sent back the documents that the Commission had and they were exactly the same as were submitted initially in the packet. So there was nothing provided by Captain LeFever to the Commission, you know, after the fact if you will. So I just wanted to

- Donald Smith -

57

make sure the Commission knew.

And then that same day -- that same day they were having their Christmas party in Albany. That same day I spoke to Fred Lamy about some issues. I may have mentioned it to Fred Lamy.

Q. Do you recall one way or the other whether you --

A. I don't. I had a number of other issues to talk to Fred about and I may have mentioned it to him. But I know I mentioned it specifically to Chris.

Q. We don't want you to guess or speculate.

A. Right.

Q. Anything that you can recall specifically discussing with Zobel or was it the same substance as Ost?

A. Same substance. Basically Captain McNamara and I, we were just concerned and we wanted to make sure -- you know, there were a number of issues in the anonymous letter that didn't make any sense at all. In other words, the issue about log books. I mean that somehow

- Donald Smith -

58

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2 someone could, you know, start remaking log  
3 books. Log books, you know, you just can't do  
4 that unless you would have a total conspiracy  
5 where people would sign, and that's just -- and  
6 we know log books are used on a routine basis.  
7 There were just a number of issues.

8 Q. Did you speak with Captain McNamara  
9 specifically about the issue raised in the  
10 anonymous letter about a procedure being put out  
11 by LeFever shortly before the Commission came to  
12 the facility?

13 A. Yes, I did.

14 Q. What did you say to McNamara and  
15 what did he say to you about that?

16 A. We just -- you know, this is an  
17 item that we still haven't got totally resolved.  
18 But it's, you know, it's -- you know, when  
19 something is put out, what was put out, when it  
20 was put out, why it was put out. And it's an  
21 issue that's still an open issue.

22 Q. Other than that, anything else that  
23 you said to McNamara and he said to you?

24 A. We talked extensively about it, but  
25 I can't specifically say I said this, he said

- Donald Smith -

59

1  
2 that.

3 Q. In substance do you recall what you  
4 said?

5 A. In substance we just wanted to  
6 protect the integrity of the process and we  
7 wanted to ensure, you know, with the Commission,  
8 and also to ensure that something wasn't being  
9 put out after the fact that would affect, you  
10 know, disciplinary action.

11 Q. Did you ever speak with Captain  
12 LeFever about it?

13 A. I have not spoken to him yet. I'm  
14 not sure if Captain McNamara has spoken to him  
15 yet. But obviously this is an issue that when  
16 we get back to taking up the disciplinary  
17 actions involving this case that will be  
18 addressed.

19 Q. And when will that be?

20 A. That will be within the next six  
21 months. Actually, I believe that will be within  
22 the next four months. I believe we have a  
23 six-month stipulation in effect.

24 Q. And the six-month stipulation is  
25 with Vasaturo and LaPolla?

- Donald Smith -

60

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A. Yes.

Q. Is LeFever a member of any union?

A. No, Captain LeFever is not a member of any bargaining unit.

Q. He serves at the pleasure of the appointing authority, namely yourself?

A. Yes, that is my understanding.

Q. So you don't actually have to prefer disciplinary charges against him in order to terminate him; is that correct?

A. No, I do not. Of course at this point in time I don't want to imply anything at this point until we get all the facts.

Q. In terms of this indication that this procedure was put out by LeFever right before the Commission of Correction came to the facility, do you know if anybody within the facility - correction staff, sergeants, you know, CO's - if they were asked anything about that by anyone?

A. I don't know.

Q. Did anybody ever investigate that as far as you know?

A. Captain McNamara is obviously, you